

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

PENSION BENEFIT GUARANTY
CORPORATION
1200 K Street, N.W.
Washington, D.C. 20005

Case No. 1:18-cv-1409

Plaintiff,

v.

BOOKE & COMPANY, INC.
as Plan Administrator of the
Booke & Company Pension Plan
355 Lexington Avenue
New York, NY 10017
United States

Defendant.

COMPLAINT FOR PENSION PLAN TERMINATION

1. This action arises under Title IV of the Employee Retirement Income Security Act of 1974, *as amended*, 29 U.S.C. §§ 1301-1461 (2012 & Supp. IV 2016) (“ERISA”). Plaintiff, Pension Benefit Guaranty Corporation (“PBGC”), files this Complaint, pursuant to 29 U.S.C. §§ 1342(a)(1) and (2), 1342(c) and 1348(a) seeking an order (i) terminating the Booke & Company Pension Plan (“Plan”); (ii) appointing PBGC as statutory trustee of the Plan; (iii) establishing November 30, 2014 as the termination date of the Plan; and (iv) directing the Defendant and any other person or entity having possession, custody, or control of any of the records, assets, or other property of the Plan, to transfer, convey, and deliver all such records, assets, and property to PBGC, as the statutory trustee upon request under 29 U.S.C. § 1342(d)(1).

JURISDICTION AND VENUE

2. This Court has exclusive jurisdiction over this action, without regard to the amount in controversy, under 29 U.S.C. §§ 1303(e)(3), 1342(c), 1342(f).

3. Venue properly lies in this Court under 29 U.S.C. §§ 1303(e)(2) and 1342(g) because the Defendant was headquartered in New York, New York, and the Plan was administered in New York, New York.

PARTIES

4. Plaintiff, PBGC, is an agency and a wholly owned United States government corporation established under 29 U.S.C. § 1302(a) to administer and enforce the pension plan termination insurance program created by Title IV of ERISA. When an underfunded pension plan terminates, PBGC ensures the timely and uninterrupted payment of statutorily guaranteed pension benefits to participants and their beneficiaries. 29 U.S.C. §§ 1302(a)(2), 1321(a), 1322.

5. Defendant, Booke & Company Inc. (“Defendant” or “Booke & Co.”), is the Plan administrator of the Plan within the meaning of 29 U.S.C. §§ 1301(a)(1) and 1002(16)(A). Defendant was an independent financial investor relations consulting firm incorporated in California and headquartered in New York, New York.

THE PENSION PLAN

6. The Plan is a tax-qualified, single-employer, defined benefit plan that is covered by Title IV of ERISA. 29 U.S.C. § 1321(a).

7. Booke & Co. is the contributing sponsor of the Plan within the meaning of 29 U.S.C. § 1301(a)(13).

8. The Plan was established effective July 1, 1977 and restated on September 24, 2003 for Booke & Co. employees who were at least 21 years old and had completed one year of service for which he/she was credited with at least one thousand hours of service.

9. As of the proposed Date of Plan Termination, the Plan had 41 participants.

10. Using the assumptions set forth in 29 U.S.C. § 1344 and the regulations thereunder, PBGC estimates that the Plan is underfunded by approximately \$1,447,148 on a termination basis as of November 30, 2014.

COMPANY BACKGROUND AND CESSATION OF BUSINESS

11. Upon information and belief, Booke & Co. was an independent financial investor relations consulting firm incorporated in California and headquartered in New York, New York until it ceased operations on November 30, 2014.

12. Upon information and belief, Booke & Co. maintained the Plan until 2014, when the company owner Stephen Booke retired and subsequently became too ill to perform his duties. Because Booke & Co. has no employees, there is no one to perform the functions of Plan administrator. By November 30, 2014, Booke & Co. had ceased all business operations.

CAUSE OF ACTION

13. Booke & Co. has liquidated all of its assets and has no ongoing operations. Accordingly, the Plan must be terminated.

14. PBGC is authorized by 29 U.S.C. § 1342 to commence proceedings to terminate a plan whenever PBGC determines, inter alia, that, pursuant to 29 U.S.C. § 1342(a)(1), the plan has not met the minimum funding standard required under 26 U.S.C. § 412 or, pursuant to 29 U.S.C. § 1342(a)(2), the plan will be unable to pay benefits when due.

15. PBGC has determined that: 1) pursuant to 29 U.S.C. § 1342(a)(1), the plan has not met the minimum funding standard required under 26 U.S.C. § 412; 2) pursuant to 29 U.S.C. § 1342(a)(2), the plan will be unable to pay benefits when due and, 3) under ERISA § 4042(c), 29 U.S.C. § 1342(c), the Plan must be terminated to protect the interests of the Plan's participants.

16. On January 9, 2018, in accordance with 29 U.S.C. § 1342(c), PBGC issued a Notice of Determination ("Notice") to Booke & Co., as Plan administrator of the Plan, notifying Booke & Co. that PBGC determined that the Plan does not have assets available to pay benefits which are currently due under the terms of the plan under 29 U.S.C. § 1342(a) , and that the Plan should be terminated under 29 U.S.C. § 1342(c). The Notice further stated that PBGC intends to have the Plan terminated, seek appointment as statutory trustee, and establish November 30, 2014, as the date of termination for the Plan. An Agreement for Appointment of Trustee and Termination of Plan ("Trusteeship Agreement") was attached with this Notice. A copy of the Notice and the Termination Agreement are attached hereto as Exhibits 1 and 2.

17. Upon information and belief, Booke & Co. is now defunct and there is no authorized individual available to sign the Trusteeship Agreement.

18. Upon notice to the plan administrator, PBGC can apply to the appropriate United States district court for a decree adjudicating that the plan must be terminated to protect the interests of the participants. ERISA § 4042(b)(iii), (c)(1)(a).

19. PBGC has determined that termination of the Plan is necessary to protect the interests of participants. *See Exhibit 1.*

20. Pursuant to 29 U.S.C. § 1348(a)(4), a district court establishes the date of termination of a pension plan covered by Title IV of ERISA when PBGC and the Plan administrator have not agreed on a date of termination.

21. November 30, 2014 should be established as the date of Plan termination pursuant to 29 U.S.C. § 1348(a)(4), because as of that date, all company operations had ceased, at which point the participants no longer had any justifiable expectation of the Plan's continuation.

22. Pursuant to 29 U.S.C. § 1342(c), a trustee for a pension plan shall be appointed by the court upon granting a decree of plan termination. Further, 29 U.S.C. § 1342(b)(1) provides that PBGC may request that it be appointed as trustee of a plan in any case.

23. PBGC is ready, willing, and able to serve as statutory trustee of the Plan. PBGC has initiated the steps necessary to administer the Plan and to pay current retirees their benefits under the Plan in accordance with the provisions of Title IV of ERISA.

RELIEF REQUESTED

WHEREFORE, PBGC respectfully requests that the Court grant judgment to PBGC and issue an Order granting the following relief:

1. Adjudicate that the Plan is terminated pursuant to 29 U.S.C. § 1342(c);
2. Appoint PBGC statutory trustee of the Plan pursuant to 29 U.S.C. § 1342(c);
3. Establish November 30, 2014 as the termination date of the Plan pursuant to 29 U.S.C. § 1348(a)(4);
4. Direct Booke & Co. and any other person or entity having possession, custody, or control of any records, assets, documents, or other property of the Plan, to transfer, convey, and deliver all such records, assets, and property to PBGC pursuant to 29 U.S.C. § 1342(d)(1); and

5. Grant any and all other relief that this Court deems just and proper.

Dated: February 16, 2018
Washington, D.C.

/s/ Louisa A. Soulard
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